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In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF PETITIONERS

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BRIEF FOR THE PETITIONERS

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Georgia and its opinion denying Petitioners' Motion for Rehearing (printed in the Appendix at pp. A. 115-36[1] and A. 152, respec-

[1]Page references preceded by "A." refer to pages of the Appendix filed in this Court along with this Brief.

tively), are reported in 224 Ga. 61, 159 S.E.2d 690 (1968). The judgments of the Supreme Court of Georgia affirming the judgments of the court below and the order denying Petitioners' Motion for Rehearing are printed at A. 136 and A. 153, respectively, and the judgments of the Superior Court of Chatham County, Georgia, are printed at A. 113 and A. 114.

JURISDICTION

The judgment of the Supreme Court of Georgia was dated and entered on January 18, 1968. Petitioners' Motion for Rehearing was denied on February 12, 1968. The petition for a writ of certiorari was filed in this Court on April 30, 1968, and was granted on June 10, 1968. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257 (3)

QUESTION PRESENTED

Does the action by a civil court, sitting with a jury, in rendering a decision on purely ecclesiastical matters concerning the views of an hierarchical church on such matters as civil rights and civil disobedience, the qualification of women to hold church office, foreordination and the Vietnam War violate the freedom of religion clause (Amend. I) and the due process of law clause (Amend. XIV, § 1) of the United States Constitution when such decision results in the transfer of control of church property from the central church authority to the dissentient members of a local congregation who disagree with these views but who failed to seek any redress in the avenues established by the government of the church?[2]

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[2] The Respondent churches had a right to appeal from the findings of the Administrative Commission of the Savannah Presbytery appointed to investigate and act, but failed to take any appeal (A. 97).

CONSTITUTIONAL PROVISIONS

Provisions of the United States Constitution which Petitioners contend have been violated by the decisions and judgments of the Supreme Court of Georgia are the following:

Amendment I which provides in part:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; . . ."

Section 1 of Amendment XIV which provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In 1966, Respondents Mary Elizabeth Blue Hull Memorial Presbyterian Church (Hull Memorial) and Eastern Heights Presbyterian Church (Eastern Heights), each a local church of the Presbyterian Church in the United States and each located in Savannah, Georgia, and within the Savannah Presbytery, became dissatisfied with various actions and pronouncements by the Presbyterian Church in the United States (sometimes called the Southern Presbyterian Church), one of the Petitioners in this case. More specifically Respondents were dissatisfied

with: 1) statements contained in church publications[3] and statements by the General Assembly[4] of the Presbyterian Church on civil disobedience as the final resort to secure to individuals their rights (A. 52-59); 2) the action of the General Assembly of the Church which amended its Constitution to make women eligible to hold church offices (A. 59-62); 3) the General Assembly's policy statement on the Vietnam War (A. 64-67); 4) the failure of the General Assembly to endorse a proposal to amend the Constitution of the United States to overcome a decision of this Court preventing Bible reading and prayer in public schools (A. 63-64); and 5) a statement of the General Assembly on foreordination (A. 63).[5]

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[3]Respondents did not use the Sunday School literature to which they objected but selected and used other literature as they were at liberty to do (A. 90).

[4]The General Assembly of the Presbyterian Church in the United States is its highest governing body. The government of the Church, in ascending order, consists of (1) the Church Session, composed of the Elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body (A. 85).

[5]Of the matters of which the Respondent churches complained, only one, the ordination of women, involved a change in the Constitution of the Church. This change was brought about in compliance with the Constitution of the Church (A. 60-62, 68, 84). All the other matters complained of—(1) the 1961 General Assembly declaration relative to foreordination; (2) the General Assembly action refusing to accept an overture relating to Bible reading and prayer; (3) the 1965 pronouncement on the Vietnam conflict; and (4) 1965 General Assembly pronouncement on civil disobedience—are all statements of points of view of the General Assembly not binding on the communicants in the church and do not constitute an abandonment of, departure from, or change in the faith and practices of the general church. The Georgia Supreme Court seemed to place great weight on statements in some Sunday School literature which had no authoritative weight in the denomination, and which the local churches were free to refuse to use and which Respondents did not use (A. 90).

The Respondents at no time used the regular procedures and discipline of the denomination to express their dissatisfaction (A. 85-86, 97). Instead, a majority of the members present at a meeting of the congregation of each of the Respondent Churches voted on April 17, 1966, to remove themselves from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States (A. 21-23; A. 29-30) and the pastors and ruling elders of the two churches renounced their respective offices in the central church. The central church authorities were then notified of this action and shortly thereafter, in accordance with the proper church procedure, an Administrative Commission was appointed by the Savannah Presbytery to consider and act upon the actions taken by the Respondent churches. After a thorough investigation, the Commission withdrew from the pastors and ruling elders of Respondents all authority to exercise office derived from the Presbyterian Church in the United States and assumed original jurisdiction over the two churches (A. 9-16; A. 31-32). No appeal was taken by either of the Respondents (A. 97).

Thereupon, these dissidents filed suit in the Superior Court of Chatham County, Georgia, seeking a permanent injunction against the Presbyterian Church in the United States and its duly constituted officers from interfering with their exclusive use and control of the local church property in Savannah, Georgia. The Superior Court submitted to a jury the question of whether the General Assembly's statements on civil rights, civil disobedience, the Vietnam War and the change in the Church Constitution which made women eligible to hold church office, constituted a substantial abandonment of the original tenets and doctrines of the Presbyterian Church in the United States and whether these actions were utterly variant from the

original purposes of that Church (A. 110-12). The jury found in favor of the local churches and thereupon the Superior Court entered its judgments (A. 113-14) which enjoined the Presbyterian Church in the United States and its authority from using the local church properties.

Petitioners appealed to the Supreme Court of Georgia and that court in an opinion (A. 115-36) affirmed the judgments of the lower court. Petitioners then filed a timely Motion for Rehearing (A. 137-52) which was denied in an additional opinion (A. 152). Petitioners then, on April 30, 1968 and within the time allowed, filed in this Court their petition for a writ of certiorari which this Court granted. This brief is now presented to this Court urging reversal of the decision by the Supreme Court of Georgia.

ARGUMENT

I.

The First and Fourteenth Amendments Forbid Civil Courts to Decide Purely Ecclesiastical Matters When Such Decisions Have the Effect of Transferring Control of Church Property from One Church Group to Another.

(a) The actions of the Respondent churches in severing all connections with the Presbyterian Church in the United States resulted in large measure from Respondents' disagreement with statements made by the General Assembly of the Presbyterian Church in the United States concerning civil rights and civil disobedience. These statements by the highest governing body of the Presbyterian Church were precipitated by the social changes which have occurred in the Southern states since 1954, and in fact

many churches with hierarchical governments have seen fit to express similar opinions concerning the propriety of civil disobedience when related to civil rights.

Shortly after the Respondents withdrew, the General Assembly of the Presbyterian Church made clear its position on civil disobedience when related to civil rights, saying in part:

> "The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters; To live responsibly under the law of the land; To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable need, and in the exercise of which the whole concept of law is not denied, but affirmed; and To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God." (A. 58).[6]

It is clear that Respondents' disagreement with the parent Church's statements on civil disobedience such as quoted above, is one of the main reasons why Respondents withdrew and severed all connections with the Presbyterian Church in the United States. (R. 169-70[7] and R. 179-80).[8]

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[6]The Presbyterian Church's basic reasoning which preceded this quotation is set forth at pp. A. 56-58.

[7]Page references preceded by "R." refer to pages of the certified transcript of the record previously filed with the Court.

[8]Respondents contend that such statements by the Church constitute intermeddling with civil affairs which they argue

The Presbyterian Church is not the only Southern Church to have such difficulty. A similar situation developed in the Methodist Church in Alabama where a local church declared itself in disagreement with the existing social policies of the parent church and announced itself separate from the Methodist Church. The dissident congregation relied upon an Alabama statute[9] which authorized a local church to withdraw local property from the use and control of the parent church upon a vote of 65% of its members. The Federal courts held the Alabama statute to be unconstitutional upon the ground that it violated the freedom of religion clause of the First Amendment, and control of the church property was returned to the parent church.[10]

If the decision of the Supreme Court of Georgia is allowed to stand, it may well be followed by many state courts and encourage widespread withdrawal of church property from the discipline of the parent church simply because there may be disagreement concerning social policy, and especially the propriety of civil disobedience as related to civil rights. Nor is the problem confined to Presbyterian churches. All churches with hierarchical forms of government will be affected, including the Epis-

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violates the Westminster Confession of Faith (R. 162-63). It should be pointed out, however, that the Confession of Faith, at pp. 136-37 (R. 711) clearly states that (1) "by way of humble petition in cases extraordinary;" *or* (2) "by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate", the Church councils can become involved in civil affairs. This is not to suggest that the Presbyterian Church has become so involved but merely to point out that under the Church Constitution, such action is not prohibited in all circumstances.

[9]Code of Alabama, Tit. 58, §§104-113 (Supp. 1967).

[10]*Northside Bible Church* v. *Goodson*, 387 F.2d 534 (5th Cir. 1967).

copal, Lutheran, Methodist, Roman Catholic and some Pentecostal denominations. If the decision is not reversed, all decisions of any church governing body will be subject to review and reversal by the civil courts. It will allow a local jury, which may disagree with the social policies of a particular church, to dictate to some extent the beliefs of that church with the fear that if the church speaks out on controversial issues, it will lose control over local church properties. Such a decision can only result in the destruction of hierarchical church government and should be reversed.

(b) In cases involving the right to the control of church property, the courts of this country have been virtually unanimous in abiding by the rule that civil courts will accept as conclusive the determinations made by the highest church authorities to which the question has been taken, and such a determination by the church judicatories is binding on the civil courts and they will be governed by such determination. This principle was firmly established by this Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). In that case the membership of the Third or Walnut Street Presbyterian Church in Louisville, Kentucky, divided over the slavery issue. The General Assembly of the Presbyterian Church in the United States and a part of the local congregation supported the anti-slavery position. A strong minority of the congregation supported the slavery cause of the South. The Kentucky state court held in favor of the pro-slavery minority and awarded to them the possession of the church property even though the governing body of the Church, the General Assembly, had recognized the anti-slavery group as the group which should have possession of the local property. See *Watson* v. *Avery*, 65 Ky. (2 Bush.) 332 (1867). After this decision in the state court, several members of the

anti-slavery faction who lived in Indiana brought suit in the Federal court on diversity grounds. The lower Federal court held in favor of the anti-slavery group and awarded possession of the church property to that group. On appeal, this Court affirmed the decision of the lower court on the ground that the anti-slavery faction had been recognized by the highest authority of the Church, the General Assembly, as the true and lawful members of the Walnut Street Presbyterian Church and were thus entitled to possession of the local church property.

In a well-reasoned opinion by Mr. Justice Miller, this Court recognized that in cases involving hierarchical churches, the decisions of the civil courts in ecclesiastical matters should be governed by the decisions made by the church governing bodies. He stated the rule as follows:

> "In this class of cases, [involving hierarchical churches such as the Presbyterian Church] we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that whenever the questions of discipline, or of faith, or eccesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." (80 U.S. (13 Wall.) at 727).

The logic underlying this rule is stated at pp. 728 and 729 where the Court reasons:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical

government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance; subject only to such appeals as the organism itself provides for." (80 U.S. (13 Wall.) at 728) (Emphasis added).

* * *

". . . It is not to be supposed that judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case to one which is less so." (80 U.S. (13 Wall.) at 729).

Watson v. *Jones* and the present case are virtually indistinguishable. In both, the division or schism occurred in large part as a result of differing views in racial matters; in both, the opposing groups were claiming possession of the local church properties; in both, the proper church authorities decided ecclesiastical matters[11] and the state

[11]In *Watson* v. *Jones*, the General Assembly decided which of two rival groups were the true and lawful representatives of the parent church. In the present case, the Administrative Commission appointed by the Presbytery of Savannah decided that there were no ministers or ruling elders duly qualified to possess the local church properties and hence the Presbytery was required to assume control (A. 15).

courts overruled the decision of the highest church judicatory to which the matters had been presented; and in both, the dissidents (those opposed to the parent church's views) contended that the parent church exceeded its authority in certain matters. Because of these similarities and because of the soundness of this Court's opinion in *Watson* v. *Jones*, the decision in the present case should be governed by the principles there stated and the holding by the Supreme Court of Georgia should be reversed.

It is obvious from a quick reading that *Watson* v. *Jones*, *supra*, was not decided on constitutional grounds. Nevertheless it conforms to the policy of separation of church and state which this Court has so zealously guarded through the years, and it is submitted that *Watson* was raised to constitutional status by this Court's decision in *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). There the Court pointed out that *Watson* was decided without depending upon the constitutional prohibitions of interference with free exercise of religion and that it was decided prior to the time when the limitations of the First Amendment were held to be applicable to state action by virtue of the Fourteenth Amendment. But the Court went on to say of that decision:

> "The opinion radiates, however, a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." (344 U.S. at 116).

But whether *Watson* v. *Jones* has been raised to constitutional status or not, there can be no question that the prin-

ciples of law, *i.e.*, "a spirit of freedom for religious organizations, and independence from secular control and manipulation", spelled out in *Watson* are still applicable today, and that decision by this Court stands as a broad cornerstone for the determination of church property disputes.

(c) In addition to the general principles of religious freedom espoused in *Watson* v. *Jones*, this Court has held in *Kedroff* v. *St. Nicholas Cathedral*, *supra*, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190 (1960), that the First and Fourteenth Amendments[12] to the United States Constitution guarantee that a state cannot, either through its legislative or judicial branches, prohibit the free exercise of religion by deciding purely ecclesiastical matters. Such matters are to be determined by the appropriate church judicatories and, once properly determined by the church, are binding and the state cannot overrule such decisions. Contrary, however, to those decisions, the holding of the Supreme Court of Georgia which Petitioners ask this Court to reverse allows civil courts to enter the ecclesiastical field and determine whether statements on social policy by the parent church would authorize dissidents to secede from the parent church and take with them control of local church properties.

In *Kedroff* this Court considered the constitutionality of a New York statute which undertook to transfer the control of Russian Orthodox churches in New York from the Patriarch in Moscow to the governing authority of the Russian Orthodox Church in America. The case first reached the courts when the American branch of the church brought suit in the New York state court to determine the right to the use and occupancy of St. Nicholas

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[12]This Court held in *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940), that the freedom of religion clause of the First Amendment is applicable to the states by virtue of the Fourteenth Amendment.

Cathedral in New York City. More specifically, the New York court was called upon to determine whether appointment of Benjamin by the Patriarch of Moscow (the ruling head of the Russian Orthodox Church) or the election of Leonty by the convention of the American churches validly selected the ruling hierarch for the American churches. Relying on the New York statute, the New York Court of Appeals[13] ruled in favor of the American branch of the church, reasoning that the primary purpose of the New York law was to provide for an orderly method for the administration of church properties and to preserve them from exploitation by those who might divert them from the true beneficiaries of the trust. On appeal, this Court reversed on the ground that the New York statute violated the freedom of religion clause of the First Amendment, made applicable to states by the Fourteenth Amendment, because the law had the effect of transferring control of church property from one administrator to another.

> "By fiat [the statute] displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." (344 U.S. at 119).

And citing *Watson* v. *Jones, supra,* as authority, Mr. Justice Frankfurter in a concurring opinion joined by Mr. Justice Black and Mr. Justice Douglas stated:

> "The judiciary has heeded, naturally enough, the menace to a society like ours of attempting to settle such religious struggles by state action. And so,

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[13] *St. Nicholas Cathedral* v. *Kedroff*, 302 N.Y. 1, 96 N.E.2d 56 (1950).

> when courts are called upon to adjudicate disputes which, though generated by conflicts of faith, may fairly be isolated as controversies over property and therefore within the judicial competence, the authority of courts is in strict subordination to the ecclesiastical law of a particular church prior to a schism." (344 U.S. at 122).

Upon remand, the New York court then ordered a retrial on a common law issue allegedly left open by this Court's opinion in *Kedroff* on the question of the right of the American branch of the church to use and occupy the Cathedral. After trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow and in favor of the American branch of the church. The court's ruling was based on the assumption that because of the domination of the Moscow Patriarch by the secular authority in the U. S. S. R. (such domination found by the New York court to be the fact) the Patriarch's appointee could not under the common law of New York validly exercise the right to occupy the Cathedral.[14] This Court granted certiorari and again reversed, holding that the *Kreshik* decision "rested on the same premises which were found to have underlain the enactment of the statute struck down in *Kedroff*." (363 U.S. at 191). This Court held that it makes no difference whether the state acts through its legislature, as in *Kedroff*, or through its judiciary, as in *Kreshik*, because whether the action is legislative or judicial it was still the application of state power and subject to the restrictions of the First and Fourteenth Amendments.[15] Thus, the same principles applied in the *Kedroff*

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[14] *St. Nicholas Cathedral of R.O. Church* v. *Kreshik*, 7 N.Y.2d 191, 164 N.E.2d 687 (1959).

[15] The Court cited as authority *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 463 (1958) and *Shelley* v. *Kraemer*, 334 U.S. 1, 14–16 (1948).

dispute forbid the state judiciary as well as its legislature from interfering with the free exercise of religion by attempting to transfer control of church property from one segment of the church to another; and the same principles should prohibit a state court sitting with a jury from deciding purely ecclesiastical matters.

The effect of the failure to apply the First Amendment to the situation presented by the record in the present case is to transfer control of local church properties from the Savannah Presbytery of the Presbyterian Church in the United States to the dissident members of the Respondent congregations who had failed to appeal the Church decision in the avenues established by the Church Constitution.

Equally applicable in the present case is the conclusion stated in *Kedroff*:

> "Ours is a government which by the 'law of its being' allows no statute [and by virtue of the *Kreshik* case, no judicial action], state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. *Even in those cases when the property rights follow as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls.* This under our Constitution necessarily follows in order that there may be free exercise of religion." (344 U.S. at 120-21) (Emphasis added).

To hold otherwise would allow the state to inject its power and authority into religion and thereby prevent the free exercise thereof.

(d) There are numerous state and lower federal court decisions which rely on the same principles and which reach the same result as this Court. Thus the Georgia de-

cision is not only in conflict with the decisions of this Court, but also with the decisions of other state and Federal courts.

In *Northside Bible Church* v. *Goodson*, 387 F.2d 534 (5th Cir., 1967), mentioned earlier, the Fifth Circuit Court of Appeals affirmed the decision of the District Court which declared unconstitutional as violative of the First and Fourteenth Amendments an Alabama statute which allowed 65% of a local congregation of an hierarchical or connectional church to withdraw local church property from the use and control of the parent church if the local group determined that a change in "social policies" had occurred within the parent. Circuit Judge Rives, speaking for the court stated:

> "State and federal courts alike are obliged to uphold the laws and rules of church governing bodies against dissident factions. Watson v. Jones, 1871, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666. Judicial tribunals, as arms of the government, must avoid interference with established church policies and government." (387 F.2d at 537).

And in the case of *Barkley* v. *Hayes*, 208 F. 319 (W.D. Mo. 1913) *aff'd sub nom. Duvall* v. *Synod of Kansas*, 222 F. 669 (8th Cir. 1915), *aff'd sub nom. Shepard* v. *Barkley*, 247 U.S. 1 (1918), this Court on appeal reaffirmed the principles of *Watson* v. *Jones, supra* (247 U.S. at 2) and unanimously upheld a decision of the District Court which sustained the right of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church to merge.

There are numerous cases from the state appellate courts deciding church property disputes in accordance with the decisions made by the church tribunals. These cases are based upon the fundamental principles applied by this Court in *Watson* v. *Jones, supra*. The following de-

cisions by state appellate courts deal specifically with the Presbyterian denomination and for that reason are cited here.

Presbytery of Indianapolis v. *First United Presbyterian Church of Indianapolis*, Cause No. 667A14 (Ind. App., 2d Div., July 3, 1968);

St. John's Presbytery v. *Central Presbyterian Church of St. Petersburg*, 102 So. 2d 714 (Fla. 1958);

Bramlett v. *Young*, 229 S.C. 519, 93 S.E.2d 873 (1956);

Trustees of Pencader Presbyterian Church v. *Gibson*, 26 Del. Ch. 375, 22 A.2d 782 (1941);

Cumberland Presbyterian Church v. *North Red Bank Cumberland Presbyterian Church*, No. ——— (Tenn. App., East. Sec., May 15, 1968).

Each of these cases cited above upholds the principle that civil courts are governed by the decisions made by the highest church judicatories to which the matter has been taken. The following quote taken from *Bramlett* v. *Young*, *supra*, is representative of the holdings of other state appellate courts:

> "The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by state authority." (93 S.E.2d at 882)

(e) Although the First and Fourteenth Amendments to our Constitution specifically prohibit the establishment of religion and interference with its free exercise, the

Georgia Supreme Court's decision does exactly that. The Georgia court held:

> "We take the view that such a trust [an implied trust upon the local church property for the benefit of the general church] is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust which the civil courts will prevent." (224 Ga. at 68, 159 S.E.2d at 695) (A. 124).

This statement is the very heart of the opinion below and Petitioners contend that it is an obvious violation of their rights under the First and Fourteenth Amendments in that such a holding prohibits all hierarchical churches from ever changing any of its doctrines or beliefs.

Under the ruling of the Georgia court, all that is necessary in order for a seceding congregation to obtain the local property is for that congregation to prove to a local jury that the parent church no longer adheres to "its tenets of faith and practice existing when the local church affiliated with it." Such a rule not only destroys the effectiveness of hierarchical church governments by preventing the governing body from ever making a binding decision, but it also completely freezes the doctrines and beliefs of hierarchical churches so that no changes in faith or practice can ever be made, even though the original doctrine included provisions for change. The State of Georgia, through its judiciary, is saying: "The theology, discipline, and tenets of faith and practice of the Presbyterian Church in the United States and its local churches must always be those which existed in the Presbyterian Church when the first local church became affiliated with the parent church. Neither the General Assembly of the

Presbyterian Church in the United States nor Hull Memorial nor Eastern Heights nor any other local Presbyterian church may ever change the faith and practices of the Presbyterian Church in the United States." The result is that the State of Georgia has forced a particular religious doctrine and belief not only upon Respondents and the Presbyterian Church in the United States, but upon all local Presbyterian churches in Georgia which affiliated with it. The Georgia court's decision, if allowed to stand, effectively emasculates the form of government, and hence the tenets of faith, presently used by the Presbyterian Church and other hierarchical churches.

Not only does this rule result in the establishment of a religion by the State, it also deprives the individual church member of his right to the free exercise of religion. By joining a particular denomination, an individual expresses his belief in the form of government and practices utilized by that denomination and if the form of government of that denomination allows for change and amendment, he has the right to expect that some change could be effected if properly done. But under the rule established by the Supreme Court of Georgia, the church would not be allowed to utilize its form of government to change its tenets of faith and practice, and therefore the individual's belief in a particular form of church government and his right to freely exercise that belief are destroyed. The result is that no matter how much he might desire to belong to a church which could change its faith and practices, he could not because no church has that right, except at the peril of losing all control over its local church property. Moreover, since all hierarchical churches within the State are subject to this rule, he would not be able to withdraw from one denomination and join another which was free to utilize its form of government as it saw fit and in fact

he could not even organize a new church with a government which provided for change or amendment of the original beliefs.

(f) Aside from the fact that the Georgia decision establishes a religion and prohibits free exercise of religion, the reasoning and rule established by the Georgia court were specifically rejected by this Court in *Watson* v. *Jones*, *supra*. In *Watson*, Mr. Justice Miller pointed out that the doctrine of the English courts at that time was that control of church property lay with the parties which held to the "true standard of faith", *i.e.*, the original beliefs of the church, citing several English cases as authority.[16] This same doctrine is the basis of the Georgia decision. Mr. Justice Miller refused to accept the argument that the English doctrine should be applied to church property disputes in this country, pointing out that the church in England was not a "free church" in the sense in which the term is applied in the United States. Therefore, if the decision of the Georgia Supreme Court is allowed to stand, this Court will be accepting the strict English doctrine which it rejected almost 100 years ago.

II.

The Arguments Advanced by Respondents Have No Validity in the Present Case and Should Be Rejected.

(a) Respondents, in their briefs in response to the petition for a writ of certiorari, contend that where a local church and the governing body of the church are involved in a conflict over possession of the local church property, civil courts have the right and authority to determine

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[16] *Attorney-General* v. *Pearson*, 3 Merivale 353, 36 Eng. Rep. 135 (Ch. 1817) and *Craigdallie* v. *Aikman*, 2 Bligh 529, 3 Eng. Rep. 601 (H.L. 1813) (Scot.).

whether the governing body of the church has acted in accordance with its constitution and procedural rules. In this regard, Respondents contend that this Court's decision in *Watson* v. *Jones, supra,* has been modified or changed to the extent that if there is "fraud, collusion or arbitrariness" or some "revolutionary action" by the church governing bodies, then the decisions of these bodies will not be given effect. Such an argument has no validity in the present case for two reasons. First, the Presbyterian Church in the United States, acting through its duly constituted bodies such as the General Assembly and the Administrative Commission of the Presbytery of Savannah, at all times strictly adhered to its rules, both substantive and procedural. Amendments to the Book of Church Order and Confession of Faith and all resolutions adopted by the General Assembly were adopted in accordance with the proper procedures of the Presbyterian Church in the United States (A. 60-62, 84 and R. 190-91). Secondly, neither the jury nor the Superior Court of Chatham County, Georgia, nor the Supreme Court of Georgia made any finding of fact or conclusion of law that the Constitution of the Presbyterian Church in the United States or any rule or regulation was in any way violated or that any action by the Church was fraudulent, or arbitrary or effected by collusive means.

(b) Respondents have also argued that civil courts have the right to make decisions affecting the title and use of church property. They contend that because Petitioners themselves, by filing a cross-action in the trial court, invoked the help of civil courts, they waived the right to insist upon the exclusivity of jurisdiction of the ecclesiastical tribunals. Petitioners do not contend that civil courts cannot decide civil matters involving property. In doing so, however, these courts must accept the deci-

sions of the ecclesiastical tribunals as final and binding on church customs or laws on ecclesiastical issues.

With regard to the point that Petitioners filed a cross-action and thereby themselves invoked the rulings of civil courts, it need only be pointed out that in *Watson* v. *Jones*, *supra*, the action was first brought to the civil courts by those loyal to the parent church. Furthermore, Petitioners only sought to have the court uphold the decision of the Savannah Presbytery's Administrative Commission which was the highest judicatory within the Church to which the question had been presented and did not request any decision on ecclesiastical matters.

III.

The Result of the Decision of the Georgia Supreme Court Is to Destroy Hierarchical Church Government by Permitting Any Church Member Who Is Dissatisfied with a Decision of His Church's Ruling Body to Carry His Complaint to the Civil Courts.

The decision of the Georgia Supreme Court is a threat to the continued existence of hierarchical church governments. Its effect is that a church governing body can make no decision or pronouncement respecting its doctrines or beliefs without subjecting its decision to the scrutiny of the civil courts. Therefore any church member who feels that the governing body of his church has taken some action or made some announcement which constitutes a departure from the original tenets of the faith may carry his complaint to a court of law for a decision on purely ecclesiastical matters. And in Georgia and states with similar procedures a jury would be given the task of determining: (1) the original beliefs of a particular religious organization, (2) the present tenets of faith of that religion, and (3) by making a comparison between the two, whether the present beliefs constitute an abandonment of or departure from the

original tenets of faith and practice. Frequently it will be necessary to make such decisions when the question presented involves some action by the church governing body which may be currently unpopular in the community, such as expressions of opinion concerning the propriety of civil disobedience as related to civil rights as is involved here. The Constitutions of churches with central government were never intended to permit a jury of men and women either trained or untrained in religious matters to interpret the faith, doctrines and teachings of a particular church.[17] But most important and even more disturbing is the realization that the state, through its judiciary, is allowed, even forced, to participate in religious affairs and to make decisions which prefer one religious group over another. Our Federal Bill of Rights removes this jurisdiction from all civil courts in the land. As Mr. Justice Black, speaking for this Court in *Everson* v. *Board of Education*, 330 U.S. 1, 15-16 (1947) said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"

If the reasoning of the Georgia Supreme Court is upheld, the doctrines, beliefs and tenets of faith and practice of all hierarchical churches will be frozen for all time to come. Churches will be effectively prevented from speaking out or taking a stand on contemporary moral issues

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[17]Members of the church involved would be disqualified to serve on the jury.

and from clarifying certain of their doctrines and from changing any beliefs or practices, even though voted upon and approved in accordance with the rules of the denomination. And if churches do speak out, dissatisfied members can take their complaints to the courts for a decision by a local jury. The facts in the instant case bear out this result. Here the governing body of the Presbyterian Church in the United States, in accordance with all procedural rules of the Church, amended its Constitution to allow women to hold church office, adopted certain resolutions involving civil rights and civil disobedience and refused to endorse a proposal to reverse by constitutional amendment a decision of this Court involving prayer and Bible reading in the public schools. Because of the Presbyterian Church's involvement in these matters, which were unpopular among the members of the Respondent churches, Respondents chose to sever all connections with the parent church and to withdraw the local property from the control of the Presbyterian Church in the United States. And when the Administrative Commission of the Savannah Presbytery, in accordance with the procedural rules of the Church, assumed original jurisdiction over the Respondent churches in order to prevent Respondents from diverting the local property, Respondents declined to appeal to a higher authority within the Church in the manner provided but instead took the matter to a court of law. If Respondents are sustained in their actions because of their disagreement with statements of points of view of the parent church, then a local church or even one member thereof who disagrees with some action or statement of the parent church can have the question submitted to the civil courts and to a jury. The authority in hierarchical churches would therefore be destroyed. Neither Respondents nor other disgruntled members of hierarchical churches should be allowed to defeat church government so easily and so

effectively. The words of this Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 729 (1871), are worthy of repetition:

> "All who unite themselves to such a body [an hierarchical church] do so with an implied consent to this government, and are bound to submit to it, but it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

CONCLUSION

Petitioners respectfully submit that the judgments of the Supreme Court of Georgia should be reversed.

Respectfully submitted,

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